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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 PETE N. CAMARGO,

12 Plaintiff,

13 vs.

14 JESSIE ROTNER; TORRAY SCALES,

15 Defendants.

Civil 11-CV-2955-DMS-(PCL)
No.

**REPORT AND
RECOMMENDATION
DISMISSING CASE FOR
FAILURE TO LITIGATE.**

16 PETER C. LEWIS, United States Magistrate Judge.

17 This Report and Recommendation is submitted to the Honorable Dana M.
18 Sabraw, United States District Judge, pursuant to the provisions of 28 U.S.C. §
19 636(b)(1)(B) and Local Civil Rule 72.1(c)(1)(f) of the United States District Court for
20 the Southern District of California.

21 **I.**

22 **INTRODUCTION**

23 Plaintiff Pete Camargo proceeds pro se in this civil rights action filed pursuant
24 to the Civil Rights Act, 42 U.S.C. § 1983. [Doc. No. 1.] Plaintiff alleges violations of
25 his 8th Amendment rights against use of excessive police force and cruel and unusual
26 punishment and his 14th Amendment due process rights.

27 Defendant Brawley Police Department filed a motion to dismiss for failure to
28 state a claim on July 26, 2012. [Doc. No. 17.] Plaintiff was granted leave to file an

1 amended complaint alleging the policies and customs of Brawley's police department
2 caused the constitutional violation alleged by plaintiff's complaint. [Doc. No. 44.]
3 Plaintiff did not timely amend his complaint, and did not respond to the Magistrate
4 Judge's Report and Recommendation, recommending to grant Defendant's motion to
5 dismiss. As a result, the district court accepted the Report and Recommendation and
6 the case was dismissed as to Defendant Brawley Police Department. [Doc. No. 56.]
7 The claims against Defendants Rotner and Scales proceeded and an Early Neutral
8 Evaluation meeting (ENE) was scheduled for February 28, 2013. [Doc. No. 57.]

9 Plaintiff spoke with the law clerk assigned to this case approximately one week
10 prior to the ENE. In this conversation Plaintiff was made aware that attendance at the
11 ENE was mandatory. Furthermore, Plaintiff, as a non-registered electronic filing user
12 was served with this information via U.S. Mail Service. [Doc. No. 58.] Plaintiff failed
13 to file an ENE brief or attend the ENE.¹ [Doc. No. 58.] Accordingly, Plaintiff was
14 ordered to show cause as to why sanctions should not be imposed for failure to appear
15 and why the case should not be dismissed for failure to litigate. [Doc. No. 59.]
16 Plaintiff was ordered to file a memorandum no later than April 5, 2013. Plaintiff was
17 also ordered to appear before the Court to show cause why this Court should not
18 impose sanctions pursuant to Local Civil Rule 83.1 and why Plaintiff's case should
19 not be dismissed for failure to litigate. The hearing was scheduled for April 17, 2013.
20 [Doc. No. 59.] Plaintiff failed to both file the memorandum and attend the hearing.
21 [Doc. No. 60.] With the exception of the phone call prior to the ENE conference in
22 February, Plaintiff has failed to act on his case for over ten months.

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28 ¹Defendants traveled from San Diego and Riverside to attend the ENE and waited approximately
ninety minutes for Plaintiff.

1 **II.**

2 **DISCUSSION**

3 Pursuant to Federal Rule of Civil Procedure, the district court may dismiss an
 4 action for failure to litigate or comply with any court order². In determining whether
 5 to dismiss an action for want of litigation, district courts are directed to liberally
 6 construe pro se plaintiff's inartful pleading. Boag v. MacDougall, 454 U.S. 364, 365
 7 (1982). In determining whether to dismiss a case pursuant to Federal Rule of Civil
 8 Procedure 41(b), the district court weighs five factors: 1) the public's interest in
 9 expeditious resolution of litigation; 2) the court's need to manage its docket; 3) the
 10 risk of prejudice to the defendants; 4) the public policy favoring disposition of cases
 11 on their merits; and 5) the availability of less drastic alternatives. Henderson v.
 12 Duncan 779 F.2d 1421, 1423 (9th Cir. 1986) .

13 Here, Plaintiff has given the litigation that he pursues minimal diligence.
 14 Plaintiff failed to file an ENE brief, attend the ENE, and ignored the order to show
 15 cause, despite the warning that his failure to litigate could result in dismissal. The last
 16 noted action on Plaintiff's complaint on the docket was filing Process Receipt and
 17 Return documents for the three original Defendants on June 20, 2012. This inaction
 18 goes beyond the permissive "inartful pleading" of a pro se plaintiff and represents a
 19 long-term failure to litigate. Given that Defendants have timely complied with all
 20 orders of the Court, Plaintiff's failure to prosecute for almost eleven months has
 21 created an inordinate delay for both Defendants and the Court in bringing this matter
 22 to an expeditious conclusion. Additionally, Local Rule 41.1 provides that actions
 23 pending in excess of six months without any proceeding or discovery may be
 24 dismissed for want of prosecution. Per Local Rule, this dismissal is without prejudice
 25 unless otherwise ordered, however, dismissing this case with prejudice, per Federal
 26 Rule of Civil Procedure 41(b) would not be an abuse of the district court's discretion.
 27 Accordingly, this Court recommends that Plaintiff's case be dismissed with prejudice.
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²Fed. R. Civ. P. 41(b).

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III.

CONCLUSION

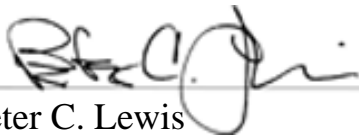
For the forgoing reasons, **IT IS HEREBY RECOMMENDED** that the Court issue an Order: (1) approving and adopting this Report and Recommendation, (2) dismissing this action and all claims with prejudice against Defendants Rotner and Scales.

IT IS ORDERED that no later than **June 4, 2013**, any party to this action may file written objections with the Court and serve a copy on all parties. The document should be captioned "Objections to Report and Recommendation."

IT IS FURTHER ORDERED that any reply to the objections shall be filed with the Court and served on all parties no later than **June 18, 2013**. The parties are advised that failure to file objections within the specified time may waive the right to raise those objections on appeal of the Court's order. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998; Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991).

IT IS SO ORDERED.

DATED: May 7, 2013


Peter C. Lewis
U.S. Magistrate Judge
United States District Court

CC: ALL PARTIES AND COUNSEL OF RECORD